THE CARMACK AMENDMENT IN THE STATE COURTS.

PRIOR to the leading case of *Adams Express Co.* v. *Croninger*,[1] decided January 6th, 1913, there was much diversity in the decisions of the state courts as to the validity of contracts between shippers and carriers limiting the amount of the carrier's liability for injuries to goods shipped. Such limitations were held valid in some states, but invalid in others, and in some were declared invalid by statutes or constitutional provisions.[2] State rules were applied to interstate as well as intrastate shipments, it being supposed that Congress had not legislated upon the subject. The CARMACK AMENDMENT of 1906[3] provided that every carrier receiving property for interstate shipment should issue a receipt or bill of lading therefor, and be liable for any injury to such property caused by it or by any connecting carrier, and concluded with the words "no contract, receipt, rule or regulation shall exempt such common carrier, railroad or transportation company from the liability hereby imposed; *Provided,* that nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he had under existing law." It had been thought, both by state and by federal courts, that the proviso above quoted was intended to save to the shipper whatever rights he had under existing *state* law; and accordingly both state and federal courts continued to apply the rules, different in different jurisdictions, which had controlled before the passage of that amendment.[4] In the *Croninger* case, however, it was held by the United States Supreme Court that Congress had evinced, in the CARMACK AMENDMENT, an intention to assume control over the whole field of the liability of common carriers on interstate shipments, and to supersede and abrogate all state laws in relation thereto; and that the proviso saving to the shipper his rights "under existing law" meant to save him only such rights as he had under existing *federal* law. There was no existing federal law forbidding contracts limiting the amount of the carrier's liability (a limitation of amount not being an exemption within the meaning of the amendment), and such contracts

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[1] 226 U. S. 491, 33 Sup. Ct. 148, 57 L. Ed. 314, 44 L. R. A. N. S. 257.

[2] See 15 Col. L. Rev. 399, 475; 21 Harv. L. Rev. 32.

[3] Act June 29, 1906: 34 Stat. at L. 595 (c. 3591, §7), Comp. Stat, 1913, §8592(11).

[4] 15 Col. L. Rev. 476, cases cited; Louisville & Nashville R. Co. v. Tharpe (1912), 11 Ga. App. 465; Nonotuck Silk Co. v. Adams Express Co. (1912), 256 Ill. 66, 99 N. E. 893; 9 Mich. L. Rev. 233; 13 Col. L. Rev. 249. See Carpenter v. United States Express Co. (1912), 120 Minn. 59, and note to Hooker v. Boston, etc. R. Co., Ann. Cas. 1912B 672, for discussions of the interpretation of the Carmack Amendment by the state courts before its consideration by the United States Supreme Court.

were therefore held to be valid, regardless of state rules or laws. Immediately following that decision, and in accordance with the doctrine there laid down, several state decisions holding such contracts invalid were reversed.[5] The same rule was held to apply to contracts for the transportation of the baggage of a passenger, in *Boston & Maine R. R.* v. *Hooker*,[6] where it was further held that the filed and published tariffs were binding on both carrier and shipper, and that regulations therein (including limitation of liability) were conclusively presumed to be a part of the contract of transportation. A year after the *Hooker* case, it was decided in *Geo. N. Pierce Co.* v. *Wells Fargo & Co.*,[7] that under the CARMACK AMENDMENT a contract limiting the amount of the carrier's liability for goods shipped between states was valid even though the stipulated amount was purely arbitrary and out of all proportion to the true value of the shipment, and even though the carrier knew that such true value was greatly in excess of the limit of liability. The theory of all these decisions was that Congress intended by its legislation to put all shippers of goods from state to state on precisely the same basis, to do away with discrimination of any kind in interstate transportation, and to make the laws governing shipments between states uniform and equal in their operation throughout the land.

The decision in the *Croninger* case, curtailing as it did the benefits which shippers in some of the states had theretofore enjoyed because of advantageous state laws, came as a distinct surprise, and was subjected to not a little adverse criticism;[8] but both state and federal courts accepted it as final, and accordingly limitations of the amount of liability in interstate transportation were thereafter upheld by all courts,[9] although, of course, the state rules were and are still ap-

[5] Chicago, St. P. M. & O. Ry. Co. v. Latta (1913), 226 U. S. 519, 33 Sup. Ct. 155, 57 L. Ed. 328, reversing Latta v. Chicago, St. P. M. & O. Ry. Co. (1909), 172 Fed. 850, 97 C. C. A. 198, in which the federal court had held that state laws were not abrogated by the Carmack Amendment; Chicago, B. & Q. Ry. Co. v. Miller (1913), 226 U. S. 513, 33 Sup. Ct. 155, 57 L. Ed. 323, reversing Miller v. Chicago, B. & Q. Ry. Co. (1909), 85 Neb. 458, 123 N. W. 449; Kansas City Southern Ry. Co. v. Carl (1913), 227 U. S. 639, 33 Sup. Ct. 391, 57 L. Ed. 683, reversing Kansas City Southern Ry. Co. v. Carl (1909), 91 Ark. 97, 121 S. W. 932, 134 Am. St. Rep. 56; Missouri, K. & T. R. Co. v. Harriman (1913), 227 U. S. 657, 33 Sup. Ct. 397, 57 L. Ed. 690, reversing Missouri K. & T. R. Co. v. Harriman, (Tex. Civ. App. 1910), 128 S. W. 932.

[6] (1914), 233 U. S. 97, 34 Sup. Ct. 526, 58 L. Ed. 868, L. R. A. 1915B, 450. See 9 Ill. L. Rev. 359; 1 Va. L. Rev. 405.

[7] (1915), 236 U. S. 278, 35 Sup. Ct. 351, 59 L. Ed. 576. For comment on this case before and after its decision by the United States Supreme Court see 10 Mich. L. Rev. 317, and 13 Mich. L. Rev. 590.

[8] See 76 Cent. L. J. 243; 11 Mich. L. Rev. 460.

[9] Collins v. Railroad Co. (1915), 96 Kans. 581, 152 Pac. 649; American Brake Shoe Co. v. Pere Marquette R. Co. (1915), 223 Fed. 1018; Michelson v. Judson Forwarding Co. (1915), 268 Ill. 546, 109 N. E. 281; Adams Express Co. v. Welborn (1915), 59 Ind.

plicable to intrastate shipments.[10] The CUMMINS AMENDMENT[11] of 1915, however, provided the necessary *federal* law on the subject, and expressly declared invalid any contract limiting the amount of the carrier's liability, though providing for a *bona fide* declaration of value, conclusive as against both parties, in the case of goods concealed from view.

But although the courts of those states in which contracts limiting the amount of the carrier's liability had formerly been held invalid were bound to follow the *Croninger* case, with its construction of the CARMACK AMENDMENT, since "it is the special prerogative of the Supreme Court of the United States to construe federal statutes,"[12] they did so reluctantly, and some of them have expressed their disapproval of the rule of that case in no uncertain terms. The North Carolina court even went out of its way in a case involving only an intrastate shipment[13] to express its opinion of the Supreme Court decision, remarking: "We do not see how such language [referring to the CARMACK AMENDMENT] can be construed to put life into a stipulation limiting liability, and give it the effect of preventing a full recovery."

A recent Ohio case—*Erie R. Co.* v. *Steinberg*,[14]—presents a particularly striking and interesting illustration of the attitude of these state courts toward the Supreme Court's interpretation of the CARMACK AMENDMENT. The plaintiff had purchased a ticket and checked her trunk thereon from Toledo to Youngstown. The trunk was lost through defendant's negligence, and plaintiff sued for its full value. Defendant's schedule of rates, rules, and regulations, on file with the Interstate Commerce Commission and with the Public Utilities Commission of Ohio, purported to limit its liability to $100. § 8994(1), General Code of Ohio, is an exact copy of the CARMACK AMENDMENT, with the single exception that its provisions are made to apply only to intrastate transportation. The Ohio court was therefore confronted with exactly the same problem which had con-

App. 330, 108 N. E. 163; Zoller Hop Co. v. Southern Pac. Co. (1914), 72 Ore. 262, 143 Pac. 931; Louisville & N. R. Co. v. Miller (1914), 156 Ky. 677, 162 S. W. 73; Hertz v. Adams Express Co. (1913), 55 Pa. Super. Ct. 378; Missouri, K. & T. Ry. Co. v. Walston (1913), 37 Okla. 517, 133 Pac. 42; United States Express Co. v. Cohn (1913), 108 Ark. 115, 157 S. W. 144 (commented on in 41 Wash. L. Rep. 577); Southern Ry. Co. v. Bynum (Ala. 1915), 69 So. 820; Donoho v. Missouri Pac. Ry. Co. (Mo. App. 1916), 187 S. W. 141; 48 Am. L. Rev. 50.

[10] Wise v. Atlantic Coast Line Co. (1915), 101 S. C. 510, 86 S. E. 22 (commented in in 14 Mich. L. Rev. 64); Cooper v. Norfolk Southern R. R. Co. (1913), 161 N. C. 400, 77 S. E. 339 (commented on in 23 Yale L. J. 95).

[11] 38 Stat. at L. 1196.

[12] Street v. Delta Mining Co. (1910), 42 Mont. 371, 382.

[13] Cooper v. Norfolk Southern R. Co. (1913), 161 N. C. 400, 77 S. E. 339.

[14] (Ohio, 1916), 113 N. E. 814.

fronted the United States Supreme Court in *Boston & Maine R. R.* v. *Hooker,* supra; but it reached a diametrically opposite conclusion, which it justified on the following grounds: *First,* that the action was, in form, one for conversion instead of for breach of contract, as it was in the *Hooker* case. A few decisions have appeared, evidently engendered in the desire already remarked to avoid the consequences of the Supreme Court ruling, which lend some force to such a distinction. In *Nashville, C. & St. L. R. Co.* v. *Truitt,*[15] it was held by the Georgia court that where a conversion by a carrier of goods shipped has been the result of gross or wilful negligence, such carrier will be deemed to have abandoned the contract of shipment, and cannot thereafter insist on a stipulation therein limiting the amount of its liability; and, further, that where a conversion has occurred the burden of disproving such gross or wilful negligence is on the carrier. But the contrary conclusion has been reached in better considered cases, holding that the effect of such a stipulation under the CARMACK AMENDMENT cannot be escaped by the mere form of the action.[16] In a well argued dissenting opinion in the Ohio case Justice JONES pointed out that the tendency of the United States Supreme Court cases was strongly against the idea that the result of its decisions could be avoided by merely changing the form of the action. Such a distinction would certainly not suffice to justify a holding contrary to the decisions already rendered in the federal Supreme Court, if the case concerned interstate transportation; and it would therefore seem to be a highly unsatisfactory basis for the refusal of the state court in an intrastate case to follow the doctrine laid down in those decisions. But the Ohio court also based its conclusion on the proposition, *second,* that a different construction should be placed on the Ohio statute, copied from the CARMACK AMENDMENT, from that placed upon the amendment itself by the United States Supreme Court. Although it is a common principle of statutory construction that when the legislature of one state or country adopts a statute of a sister state or country, the construction placed upon that statute by the courts of the jurisdiction from which it was borrowed will ordinarily be followed,[17] this is not a binding rule, and courts are at liberty to depart from it, especially as regards a construction by the courts of the parent state or country occurring subsequent to its adoption therefrom. The Ohio statute in question was passed in 1911, and the construction of the CARMACK AMEND-

[15] (1915) 17 Ga. App. 236, 86 S. E. 421 (commented on in 14 Mich. L. Rev. 141).

[16] F. W. Brockman Commission Co. v. Missouri Pac. Ry Co. (Mo. App. 1916), 188 S. W. 920; D'Utassy v. Adams Express Co. (N. Y. 1916), 114 N. E. 786.

[17] Interstate Commerce Commission v. Baltimore & Ohio R. R. Co. (1892), 145 U. S. 263.

MENT by the United States Supreme Court in the *Croninger* case was announced in 1913. The Ohio court refused to adopt that construction for its own statute, and this for several reasons, the first of which is said to be that uniformity of intrastate and interstate laws is desirable, and that a different construction is necessary for uniformity, since the CUMMINS AMENDMENT has changed the law applicable to interstate shipments. As the court itself says, should the Ohio statute be construed in accordance with the construction of the CARMACK AMENDMENT by the Supreme Court, "it would be necessary for the general assembly of this state, if it desires uniformity of state and interstate commerce laws, to amend that section to conform to the provisions of the CUMMINS AMENDMENT. However, the conclusion this court has reached makes such an amendment unnecessary." Even apart from the fact that a holding based on such an argument would be practically a self-styled piece of judicial legislation, it is difficult to see, as the dissenting opinion points out, how the CUMMINS AMENDMENT could affect the case, for the cause of action arose nearly two years before that amendment was passed.[18] But it is further urged by the Ohio court that Congress, by passing the CUMMINS AMENDMENT, indicated that the construction placed upon the CARMACK AMENDMENT by the Supreme Court was not in accordance with its intention, and hence that the legislature of Ohio did not intend such a construction of its statute, for "the intent of the General Assembly of Ohio when it passed that section must have been identical with the intent of Congress when it passed the CARMACK AMENDMENT." This view of the reason for the CUMMINS AMENDMENT has not been taken by the courts of other states. For example, in *Colby* v. *American Express Co.*[19] the New Hampshire court declared that "the act of March 4, 1915, appears to intend a change of the law, and not to be a declaration of the meaning of a statute now in force." But whether that view is correct or not, the argument of the Ohio court, though it shifts the unpleasant responsibility of renouncing the Supreme Court's interpretation of the CARMACK AMENDMENT to the broad shoulders of Congress, really amounts to a declaration that it does not agree with the ruling of the Supreme Court, and does not propose to follow it. And this seems to be the only valid reason given for its decision—the court's conviction that the CARMACK AMENDMENT did not mean what the Supreme Court had said it meant. As has been remarked before, the Ohio court is not alone in that conviction.

[18] Note, in this connection, Louisville & N. R. Co. v. Jones (1915), 192 Ala. 532, 68 So. 871, in which the Alabama court declined to read the Cummins Amendment into its state law for the sake of uniformity.

[19] (1915), 77 N. H. 548, 94 Atl. 198.

After thus justifying, at some length, in an argument not inaptly termed, in Justice JONES' dissenting opinion, a "remarkable apologia," its refusal to be bound by the Supreme Court's construction of the federal statute, the Ohio court in the *Steinberg* case proceeded to construe its local statute in accordance with its own ideas of statutory construction, in the light of local laws and conditions, and reached the conclusion that a contract limiting the amount of a carrier's liability for property shipped, which was not a bona fide agreement as to its value, was invalid under that statute. It would seem that the whole matter could have been disposed of with less effort and much more simply. The United States Supreme Court had interpreted the proviso in the CARMACK AMENDMENT saving to the shipper his rights "under existing law" to mean "under existing *federal* law." There was no existing federal law invalidating contracts limiting the amount of a carrier's liability, since they were not prohibited by the amendment itself as interpreted by the court; and therefore such contracts were held to be valid, with reference to interstate transportation. But the same proviso appears in the Ohio statute, and must refer, of course, to existing *Ohio* law. And for that law the Ohio court was not confined to the statute, nor to any statute, but might have looked to prior Ohio decisions, in which it had more than once been held, as it was held in the *Steinberg* case, that a clause in a receipt or bill of lading or elsewhere limiting the amount of a carrier's liability for negligence was not binding, even though less was charged and paid for carriage by reason of the insertion of such clause.[20]

In cases involving interstate shipments, the reluctance of many state courts to extend the doctrine of the *Croninger* case has manifested itself in a tendency to limit its application closely to cases involving essentially the same facts as were presented by the United States Supreme Court decisions, and to reach a conclusion without reference to those decisions in cases involving facts even slightly different. The Supreme Court, on the other hand, has shown a decided inclination not to limit the effect of its holding, but to apply it freely and broadly. The result has been a series of efforts on the part of these state courts to find distinctions whereby they might justify the application of rules different from that applied by the Supreme Court, which efforts have often been nullified by subsequent decisions in the latter court when the same or similar problems have been presented to it. For example, some time after the decision in

[20] United States Exp. Co. v. Bachman (1875), 2 Cin. Sup. Ct. R. 251 (affirmed in 28 Oh. St. 144); Pennsylvania Co. v. Yoder (1903), 15 O. C. D. 32; Ambach v. B. & O. R. Co. (1893), 4 S. & C. P. Dec. 467; Jacobson v. Adams Express Co. (1885), 1 O. C. D. 212.

the *Croninger* case, it was held by the Oklahoma court[21] that an undervaluation of goods shipped was not binding on either carrier or shipper where the carrier had actual knowledge of the true value, because the result of such a *wilful* undervaluation was a discrimination forbidden by the ELKINS ACT.[22] Such a decision would seem to have been justified by prior decisions of the United States Supreme Court, in which it had apparently indicated that its ruling in the *Croninger* case would not be applied in a case similar to that presented to the Oklahoma court;[23] but it was overthrown very shortly afterward in the case of *Geo. N. Pierce Co.* v. *Wells, Fargo & Co.*, supra, where it was held by the Supreme Court that a contract limiting the carrier's liability to $50 on a shipment of automobiles worth $15,000 precluded recovery by the shipper of more than the stipulated amount. The North Carolina court, which has already been referred to as one of those which strongly disapproved the rule of the *Croninger* case, held, in a case involving the validity of a stipulation in a bill of lading limiting the carrier's liability for *delay*,[24] that delay was not a "loss, damage, or injury" to property within the meaning of the CARMACK AMENDMENT, and it therefore concluded, by a curious process of reasoning, that Congress did not, by that amendment, intend to abrogate the state laws in regard to liability therefor. Accordingly, the North Carolina rule was applied, and the limitation was held invalid. Such a decision was certainly not in line with the attitude of the United States Supreme Court, and it is not surprising that when the question was presented to the latter court it declined to approve of the effort to limit the effect of its interpretation of the law, but held that limitations of amount of liability for delay were within the scope of its former decisions and were valid.[25]

In still another class of cases, a supposed loophole of escape from the operation of the doctrine of the *Croninger* case was closed by later decisions of the United States Supreme Court, viz., cases involving the question of the liability of the railroad or other transportation company after it had ceased to be a carrier, and had become a warehouseman. It was thought by a few courts that, though a stipulation limiting the amount of liability was valid so long as the

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[21] St. Louis & S. F. R. Co. v. Mounts (1914), 44 Okla. 359, 144 Pac. 1036.

[22] 32 Stat. at L. 847, c. 708.

[23] Kansas City Southern Ry. Co. v. Carl (1913), 227 U. S. 639, 33 Sup. Ct. 391, 57 L. Ed. 683; Missouri, K. & T. Ry. Co. v. Harriman (1913), 227 U. S. 657, 33 Sup. Ct. 397, 57 L. Ed. 690.

[24] Byers v. Southern Express Co. (1914), 165 N. C. 542, 81 S. E. 741.

[25] N. Y. Phila. & Norfolk Ry. Co. v. Peninsula Product Exchange of Maryland (1916), 240 U. S. 34, 36 Sup. Ct. 230. 60 L. Ed. 511. See 14 Mich. L. Rev. 498.

relation of carrier and shipper existed, when that relation terminated it had spent its force, and that the validity of such a limitation during the ensuing relation of warehouseman should be governed by state, rather than federal, law.[26] It was so held by the Ohio Court of Appeals in *Cleveland, C. C. & St. L. Ry. Co.* v. *Dettlebach,* and the Supreme Court of that state declined to review a judgment for the full market value of goods destroyed by the defendant's negligence after it had ceased to be a carrier and had become a warehouseman with relation thereto. But this case was reversed by the United States Supreme Court, and it was there held that the rule of liability limitation applied in the *Croninger* case was applicable not only to the service of the transportation company as a carrier but to its services as warehouseman as well.[27] The same rule was laid down in the later case of *Southern R. Co.* v. *Prescott,*[28] holding that the provisions of the bill of lading govern even where the goods are allowed to remain in the carrier's warehouse after giving receipt therefor and payment of freight; and in the very recent case of *Western Transit Co.* v. *Leslie Co.,*[28a] where a ton of copper was stolen from the carrier's warehouse after it had been in storage therein, pursuant to an arrangement with the carrier, for nearly four months, it was held that a limitation of liability in the bill of lading and the filed and published tariff was operative and binding. But even in spite of so definite a statement of the law by the United States Supreme Court, the Texas Court of Appeals, in a recent decision, has ignored it, and held in accordance with the prior Ohio case and its own state rule.[29]

In still other decisions, involving questions which have not yet been passed upon by the United States Supreme Court, the reluctance with which many courts accept its ruling in the matter under discussion is manifest. For example, it was held by the Arkansas court[30] that a contract limiting the amount of the carrier's liability was invalid where the shipper had no choice of rates, because there was no consideration for such a contract, as there was in those cases where an agreed valuation was based on a lower rate; and by the Kansas City Court of Appeals[31] that a carrier cannot absolve itself

[26] Prescott v. Railway Co. (1914), 99 S. C. 422, 83 S. E. 781.

[27] Cleveland, C. C. & St. L. Ry. Co. v. Dettlebach (Jan. 1916), 239 U. S. 588, 36 Sup. Ct. 177, 60 L. Ed. 453 (commented on in 14 Mich. L. Rev. 497).

[28] (Apr. 1916), 240 U. S. 632, 36 Sup. Ct. 469, 60 L. Ed. 836 (commented on in 14 Mich L. Rev. 676), reversing Prescott v. Railway Co., supra.

[28a] Decided Jan. 7, 1917. 37 Sup. Ct. —.

[29] Hamilton Mill & Elevator Co. v. Stephenville N. & S. T. Ry. Co. (Tex. Civ. App., Oct., 1916), 189 S. W. 774.

[30] Kansas City & M. Ry. Co. v. Oakley (1914), 115 Ark. 20, 170 S. W. 565.

[31] Morrison Grain Co. v. Missouri Pac. Ry. Co. (1914), 182 Mo. App. 339, 170 S. W. 404.

from its common law liability by a stipulation in an independent contract, not a part of the contract of transportation. The Alabama court[32] approved the doctrine that contracts limiting the carrier's common law liability are to be construed very strictly against the carrier, and decided that no such contract is valid which is not in the exact form prescribed by the rules of the Interstate Commerce Commission. It held, therefore, that it was proper to instruct a jury that the carrier could not limit its liability for negligence by a mere stipulation in a bill of lading. Similarly, the Mississippi court[33] held that where a contract limiting the amount of the carrier's liability was made in consideration of a lower rate, but it was not shown that the rate so given was based upon a schedule of rates filed with and approved by the Interstate Commerce Commission, the rule of the *Croninger* case was not applicable, and the full value of the shipment was recoverable.

A particularly interesting group of cases have dealt with that part of the CARMACK AMENDMENT which required every carrier to issue a receipt or bill of lading therefor, and have decided that, even under the terms of that amendment, such a receipt or bill of lading is not essential to a valid contract of transportation. In the words of the Kansas City Court of Appeals in *Morrison Grain Co.* v. *Mo. Pac. Ry. Co.*,[34] holding that the liability of a carrier on an interstate shipment may commence before the issuance of any receipt or bill of lading, "if the carrier chose to accept and begin the transportation of goods without issuing a bill of lading, it would be violating the act referred to [the CARMACK AMENDMENT] but the relation of shipper and carrier would exist none the less." And this seems to be the accepted rule.[35] In *American Express Co.* v. *Merten*,[36] the application of this rule resulted in a conclusion by the Oklahoma court that where the contract of carriage had been completed before the issuance of the required receipt, without any specific declaration as to value, the carrier was liable for the full value of the shipment, regardless of any filed or published schedules, or of the terms of a receipt subsequently issued and accepted by the shipper. Such a decision apparently involves a holding that filed and published tariffs are not conclusively presumed to be a part of the contract of carriage; but, as regards interstate transportation, this is evidently op-

[32] Central of Georgia Ry. Co. v. Broda (1914), 190 Ala. 266, 67 So. 437.

[33] Yazoo & M. V. R. Co. v. Peoples (1913), 106 Miss. 604, 64 So. 262.

[34] (1914), 182 Mo. App. 339, 170 S. W. 404.

[35] Davis v. Norfolk & S. R. Co. (N. C. 1916), 90 S. E. 123; American Express Co. v. Merten (1914), 42 Okla. 492, 141 Pac. 1169.

[36] (1914), 42 Okla. 492, 141 Pac. 1169.

posed to the holdings of the United States Supreme Court and of other state courts.[37]

It is now well settled that where the carrier's liability is limited by stipulation to a certain amount per ton or hundredweight its liability in case of loss or damage to a part only of the shipment will be limited to the stipulated value per ton or hundredweight of the part lost or injured.[38] A few earlier cases have held otherwise, taking the view that this method of valuation was simply a means of arriving at a total value for the whole shipment, and that the liability for loss of part was limited only by such total value.[39] The United States Supreme Court, however, in *Kansas City R. Co.* v. *Carl.*,[40] decided the rule to be as first stated as regards a shipment composed of several separate parts or parcels; and in *Western Transit Co.* v. *Leslie Co.*, supra, the same rule was applied where the carrier's liability for a carload of copper metal was limited to $100 per ton. But where the stipulated amount purports to be the total value of the goods shipped without regard to weight or parcels, or to be an agreement as to the maximum liability for the whole shipment, the rule is not so clear. Those state courts which have considered the matter have declined to extend the doctrine of the United States Supreme Court decisions to include such cases, and have held that the liability for loss of a part is limited only by the total agreed value or maximum liability.[41] On the other hand, a case in the federal circuit court has held, without argument or citation of authority, that the liability for loss of a part only of a carload of goods shipped under a contract limiting the liability to a stated amount for the whole carload is limited to such proportion of that amount as the property destroyed bears to the whole shipment.[42]

The CUMMINS AMENDMENT has set at rest the problems presented in a few of the cases referred to in this article; but it has left others

[37] Kansas City Southern Ry. Co. v. Carl, 227 U. S. 639, 33 Sup. Ct. 391, 57 L. Ed. 683; Boston & Maine R. R. v. Hooker, 233 U. S. 97, 34 Sup. Ct. 526, 58 L. Ed. 868; Santa Fe Ry. Co. v. Robinson, 233 U. S. 173, 34 Sup. Ct. 556, 58 L. Ed. 901; Panhandle & S. F. Ry. Co. v. Bell (Tex. Civ. App. 1916), 189 S. W. 1097; Colby v. American Express Co. (1915), 77 N. H. 548, 94 Atl. 198; Clingan v. C. C. C. & St. L. Ry. Co. (1913), 184 Ill. App. 202; Zoller Hop Co. v. Southern Pac. Co. (1914), 72 Ore. 262, 143 Pac. 931. See 27 Harv. L. Rev. 737, for a criticism of this rule as laid down in the Hooker case. And see Harris v. Southern Ry. Co. (1915), 100 S. C. 469, 85 S. E. 158, and comment thereon in 25 Yale L. J. 81.

[38] United Lead Co. v. Lehigh Valley R. Co. (1913), 156 App. Div. 525, 141 N. Y. Supp. 310.

[39] Huguelet v. Warfield (1909), 84 S. C. 87, 65 S. E. 985; Carleton v. Union Transfer & Storage Co. (1909), 137 App. Div. 225, 121 N. Y. Supp. 997.

[40] (1913), 227 U. S. 639, 33 Sup. Ct. 391, 57 L. Ed. 683.

[41] Visanska v. Southern Express Co. (1912), 92 S. C. 573, 75 S. E. 962; Central of Georgia R. Co. v. Broda (1914), 190 Ala. 266, 67 So. 437.

[42] Shelton v. Canadian Northern Ry. Co. (1911), 189 Fed. 153.

still unsettled, and itself presents still others which will undoubtedly be disclosed in cases soon to be before the courts.[43] For instance, as regards the class of cases discussed in the preceding paragraph, it will be interesting to note what rule is to be applied in determining the carrier's liability for loss or damage to a part only of goods concealed from view, the value of which has been declared by the shipper in accordance with that amendment. This and many other questions remain to be considered; and it cannot be definitely stated in advance just how far state rules and how far federal rules will be applied in deciding them.

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[43] See 33 I. C. C. R. 683 and 36 id. 84 for discussions by the Interstate Commerce Commission as to the effect of the Cummins Amendment.